

Item No. 6.	Classification: Open	Date: 17 December 2020	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Aguila Restaurant, First Floor, Arch 147, Eagle Yard, Hampton Street, London SE1 6SP	
Ward(s) of group(s) affected		Newington Ward	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Jose Ernesto Mesa Santana for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Aguila Restaurant, First Floor, Arch 147, Eagle Yard, Hampton Street, London SE1 6SP.
2. Notes:
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 11 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.
 - c) Paragraphs 12 to 18 of this report deal with the representations submitted in respect of the application. Copies of the representation submitted by the responsible authorities and attached to this report in Appendix B and copies of representations from other persons attached in Appendix C. A map showing the location of the premises is attached to this report as Appendix E.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.

4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to;
 - The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence application

8. On 22 October 2020 Jose Ernesto Mesa Santana applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Aguila Restaurant, First Floor, Arch 147, Eagle Yard, Hampton Street, London, SE1 6SP. The premises are described in the application as simply being:
 - “The shop is a first floor of Arch 147, comprises of a family seating area, with a bar for 4 people keeping social distancing in place. The table are distributes with the social distance in mind for seating a family of 4. The main food is traditional Caribbean, with light alcohol drinks to be serve with. There is ladies toilet on the floor located at the end on the right hand side next to the stairs, going down the stairs is the men's toilets. The main entrance is by the front door, taking the stairs up on the left hand side. There is a emergency route at the back of the premises on the stairs leading the men's toilet...”
9. The hours applied for are summarised as follows:
 - The sale by retail of alcohol (on sales only):
 - Sunday to Thursday: 10:00 to 22:00

- Friday and Saturday: 10:00 to 01:00 the following day
 - The provision of late night refreshment (indoors):
 - Friday to Sunday: 23:00 to 01:00 the following day
 - The provision of recorded music (indoors) – which the Applicant states will be unamplified:
 - Friday to Saturday: 23:00 to 01:00 the following day
 - Sunday: 23:00 to 01:00 the following day
 - Opening hours:
 - Monday to Thursday: 10:00 to 00:00
 - Friday to Sunday: 10:00 to 01:00.
10. The designated premises supervisor (DPS) is to be Jose Ernesto Mesa Santana (the licence applicant), who holds a personal licence with the London Borough of Southwark.
 11. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. A copy of the application and premises plan is attached to this report in Appendix A.

Representations from responsible authorities

12. Representations have been received from three responsible authorities, namely the Metropolitan Police Service, the planning authority and the licensing authority.
13. A representation has been received from the Metropolitan Police Service (licensing division) requesting additional conditions. The police also state that the hours applied for are outside of the Southwark statement of licensing policy.
14. A representation has been received from the planning authority stating that planning permission has not been sought and that there is a concern for cumulative impact (though it should be noted that the premises is not within a cumulative impact area).
15. A representation has been submitted by the licensing authority, in their role as a responsible authority. The licensing authority have requested additional conditions and state that the hours applied for are outside of the hours recommended in the Southwark statement of licensing policy.
16. The representations are all available in Appendix B.

Representations from other persons

17. Representations have been received from 10 other persons. These are all residents in the immediate vicinity who provide details of how their lives are already negatively impacted by similarly licensed premises on the same parade and that they believe that the granting of another premises will only add to the problems of antisocial behaviour in the locality.
18. Redacted versions of the representations are available in Appendix C.

Conciliation

19. All representations were sent to the applicant and at the point of publication of the report none of the representations had been conciliated. An offer has been made for the applicant to send mediatory correspondence to all parties.

Premises history

20. Arch 147 applied for a premises licence on 22 July 2020, but the application was eventually rejected as the applicant had failed to advertise the application either at the premises or via a local newspaper within the consultation period. This is a new application.
21. There is already a premises licence in place at Arch 147 for Rincon Tropical, which is stated as being on the second floor. However, the arches only have a ground floor and and upstairs, so this may be a mistake, as it should say 'first floor'.
22. There are temporary events notices, complaints and a history of non-compliance regarding Rincon Tropical, but not associated with the current applicant.

Deregulation of entertainment

23. On 6 April 2015 entertainment became deregulated and as a result:
 - Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
 - Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
 - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.
 - Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.
24. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
25. The showing of films has not been de-regulated.

Business and Planning Act

26. The provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences which only permit the sale of alcohol for consumption on the premises to allow the sale of alcohol for consumption off the premises. This will make it easier for licensed premises to sell alcohol to customers for consumption off the premises in England and Wales, which will allow businesses to trade and maintain social distancing.

Map

27. A map showing the location of the premises is attached to this report as Appendix E. The following are a list of licensed premises in the immediate vicinity of the application:

Dragon Castle, 100 Walworth Road, London SE17 1JL:

- The sale by retail of alcohol (on sales only):
 - Monday to Sunday from 11:00 to 23:30
- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Sunday from 11:00 to 23:30

Da Spago Limited, Unit 1, 163 Dashwood Way, London SE17 3PZ:

- The sale by retail of alcohol (off sales only):
 - Monday to Saturday from 08:00 to 19:30
 - Sunday from 11:00 to 15:00

After Taste Chinese Restaurant, 97 Newington Butts, London SE1 6SF:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 11:00 to 00:00 (midnight)
 - Sunday from 12:00 (midday) to 23:30
- The provision of late night refreshment (indoors):
 - Monday to Saturday from 23:00 to 00:00 (midnight)
 - Sunday from 12:00 (midday) to 23:30

Ivory Arch, 80-82 Walworth Road, London SE1 6SW:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Sunday from 11:00 to 00:00 (midnight)

- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Sunday from 23:00 to 00:00 (midnight)
- The provision of regulated entertainment in the form of live music, recorded music, films and plays :
 - Monday to Sunday from 11:00 to 00:00 (midnight)

Mamuska, 16 Elephant and Castle, London SE1 6TH:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 10:00 to 02:00 (the following day)
 - Sunday from 12:00 (midday) to 23:00
- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Saturday from 23:00 to 02:30 (the following day)
 - Sunday from 23:00 to 23:30
- The provision of regulated entertainment in the form of live music, recorded music, and performances of dance:
 - Monday to Saturday from 09:00 to 02:00 (the following day)
 - Sunday from 09:00 to 23:00

Chatkhara Restaurant, 84 Walworth Road, London SE1 6SQ:

- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 02:00 (the following day)

La Barra, Arch 147, Eagle Yard, London SE1 6SP:

- The sale by retail of alcohol (on sales only):
 - Sunday to Thursday from 10:00 to 23:00
 - Friday and Saturday from 10:00 to 00:00
- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:00

Rincon Tropical, 2nd Floor, Arch 147 Eagle Yard, London SE1 6SP:

- The sale by retail of alcohol (on sales only):
 - Sunday to Thursday from 10:00 to 23:00
 - Friday and Saturday from 10:00 to 00:00

- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:30.

Policy implications

Southwark Council statement of licensing policy

28. Council assembly approved Southwark's statement of licensing policy 2019 - 2021 on 27 March 2019. The policy came into effect on 28 March 2019. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:
- Section 3 - Purpose and Scope of the Policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications.
 - Section 5 – Determining Applications for Premises Licences and Club Premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
 - Section 6 – Local Cumulative Impact Policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.
 - Section 7 – Hours of Operation. This provides a guide to the hours of licensed operation that this Authority might consider appropriate by type of premises and (planning) area classification. To be read in conjunction with Appendix B to the policy.
 - Section 8 – The Prevention of Crime and Disorder. This provides general guidance on the promotion of the first licensing objective.
 - Section 9 – Public Safety. This provides general guidance on the promotion of the second licensing objective.
 - Section 10 – The Prevention of Nuisance. This provides general guidance on the promotion of the third licensing objective.
 - Section 11 – The Protection of Children from Harm. This provides general guidance on the promotion of the fourth licensing objective.
29. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

30. Within Southwark's statement of licensing policy 2019 - 2021, the premises is situated in the Elephant and Castle major town centre area and outside of a cumulative impact area. Under the Southwark statement of licensing policy 2019-21 the following closing times are recommended as appropriate within this area for this categories of premises indicated:

- Restaurants and cafes:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00
- Public houses, wine bars or other drinking establishments:
 - Sunday to Thursday: 23:00
 - Friday and Saturday 00:00,

Resource implications

31. A fee of £190.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value B.

Consultation

32. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

33. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

34. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.

35. The principles which sub-committee members must apply are set out below.

Principles for making the determination

36. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.

37. The principles which sub-committee members must apply are set out below.

Principles for making the determination

38. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
39. Relevant representations are those which:
- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
 - Are made by an interested party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
40. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
- To grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence.
 - To exclude from the scope of the licence any of the licensable activities to which the application relates.
 - To refuse to specify a person in the licence as the premises supervisor.
 - To reject the application.

Conditions

41. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
42. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
43. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.

44. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
45. Members are also referred to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

Reasons

46. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a premises licence application, it must give reasons for its decision.

Hearing procedures

47. Subject to the licensing hearing regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that:
- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations.
 - Members of the authority are free to ask any question of any party or other person appearing at the hearing.
 - The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
 - Address the authority
 - If given permission by the committee, question any other party.
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
 - The committee shall disregard any information given by a party which is not relevant to the particular application before the committee and the licensing objectives.
 - The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
 - In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
48. This matter relates to the determination of an application for a premises licence under section 17 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the licensing sub-committee

49. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
50. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, members should disregard the council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the council's statement of licensing policy.
51. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.
52. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
53. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.
54. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
55. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the borough.
56. Other persons, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the magistrates' court within a period of 21 days

beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

Guidance

57. Members are required to have regard to the Home Office guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

58. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Application for a premises licence and plans
Appendix B	Representations submitted by Responsible Authorities
Appendix C	Representations submitted by Other Persons
Appendix D	Current Licence
Appendix E	Map of the locality

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure		
Report Author	Andrew Heron, Principal Licensing Officer		
Version	Final		
Dated	2 December 2020		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments sought	Comments included
Director of Law and Democracy		Yes	Yes
Strategic Director of Finance and Governance		Yes	Yes
Cabinet Member		No	No
Date final report sent to Constitutional Team			4 December 2020